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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 DONALD JOSEPH TRUAX,

12 Petitioner,

13 v.

14 M. SANDOR, Warden,

15 Respondent.
16
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NO. EDCV 12-1396-GHK (AGR)

OPINION AND ORDER ON
PETITION FOR WRIT OF
HABEAS CORPUS

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19 I.

20 **PROCEDURAL BACKGROUND**

21 On July 16, 1999, a San Bernardino County jury convicted Petitioner of
22 premeditated attempted murder, kidnapping, and forcible rape. (Petition at 1a).
23 Petitioner was sentenced to 16 years in prison plus life with the possibility of
24 parole. (*Id.*)

25 On June 27, 2001, Petitioner filed a petition for writ of habeas corpus
26 challenging his conviction in the Central District in *Truax v. Giurbino*, Case No.
27 EDCV 01-453-GHK-Mc ("*Truax I*").¹ On May 9, 2002, judgment was entered
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¹ Pursuant to Fed. R. Evid. 201, the court takes judicial notice of the records in prior federal habeas corpus actions brought by Petitioner in the Central District and of applications filed by Petitioner in the Ninth Circuit.

1 denying the petition on the merits with prejudice. *Id.*, Dkt. No. 20. On April 2,
2 2004, the Ninth Circuit affirmed in Case No. 02-56246, Dkt. No. 34.

3 On December 6, 2006, Petitioner filed an application for leave to file a
4 second or successive petition in Ninth Circuit Case No. 06-75579, which was
5 denied on February 28, 2007.

6 On June 17, 2008, Petitioner filed another habeas petition in the Central
7 District in Case No. EDCV 08-810-GHK-CT. On July 2, 2008, the petition was
8 dismissed for lack of jurisdiction as a second or successive petition, and
9 judgment was entered accordingly. *Id.*, Dkt. Nos. 11-12.

10 On October 8, 2008, in Ninth Circuit Case No. 08-73213, the court denied
11 Petitioner's application for authorization to file a second or successive petition.

12 On October 19, 2009, in Ninth Circuit Case No. 09-72972, the court denied
13 Petitioner's application for authorization to file a second or successive petition.

14 On August 20, 2012, Petitioner filed a Petition for Writ of Habeas Corpus
15 by a Person in State Custody ("Petition") pursuant to 28 U.S.C. § 2254 in which
16 he challenges his 1999 conviction. (Petition at 1a.)

17 II.

18 DISCUSSION

19 The Petition was filed after enactment of the Antiterrorism and Effective
20 Death Penalty Act of 1996 ("AEDPA"). Therefore, the court applies the AEDPA in
21 reviewing the Petition. *Lindh v. Murphy*, 521 U.S. 320, 336, 117 S. Ct. 2059, 138
22 L. Ed. 2d 481 (1997).

23 The AEDPA provides, in pertinent part: "Before a second or successive
24 application permitted by this section is filed in the district court, the applicant shall
25 move in the appropriate court of appeals for an order authorizing the district court
26 to consider the application." 28 U.S.C. § 2244(b)(3)(A). A district court does not
27 have jurisdiction to consider a "second or successive" petition absent
28 authorization from the Ninth Circuit. *Burton v. Stewart*, 549 U.S. 147, 152, 127 S.

1 Ct. 793, 166 L. Ed. 2d 628 (2007); *Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th
2 Cir. 2001) ("When the AEDPA is in play, the district court may not, in the absence
3 of proper authorization from the court of appeals, consider a second or
4 successive habeas application.") (citation and quotation marks omitted).

5 Here, the Petition is a second or successive petition that challenges the
6 same conviction and sentence imposed by the same judgment of the state court
7 as in *Truax I*.

8 It plainly appears from the face of the Petition that Petitioner has not
9 received authorization from the Ninth Circuit to file a second or successive
10 petition. This court must, therefore, dismiss the Petition as a successive petition
11 for which it lacks jurisdiction under 28 U.S.C. § 2244(b)(3). See *Burton*, 549 U.S.
12 at 152.

13 Rule 4 of the Rules Governing Section 2254 Cases in the United States
14 Courts provides that "[i]f it plainly appears from the face of the petition and any
15 attached exhibits that the petitioner is not entitled to relief in the district court, the
16 judge must dismiss the petition and direct the clerk to notify the petitioner." Here,
17 summary dismissal is warranted.

18 **III.**

19 **ORDER**

20 IT IS HEREBY ORDERED that judgment be entered summarily dismissing
21 the Petition and action for lack of subject matter jurisdiction.

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23 DATED: 8/30/12

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25 GEORGE H. KING
26 United States District Judge
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